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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Assessment and Collection	)	
of Regulatory Fees for	)	MD Docket No. 95-3
Fiscal Year 1995	)	

COMMENTS OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL

The American Public Communications Council ("APCC") submits the following comments in response to the Commission's Notice of Proposed Rulemaking, FCC 95-14, released January 12, 1994 ("Notice"). APCC's comments are directed to the proposed fees applicable to wireline common carrier services provided by resellers. Notice, ¶¶ 55-61.

STATEMENT OF INTEREST

APCC is a trade association made up of more than 1000 competitive providers of pay telephone and public communications equipment, services, and facilities. APCC seeks to promote competitive markets and high standards of service for pay telephones and public communications.

As independent pay telephone companies, APCC members operate independent public payphones ("IPPs") in competition with the pay telephone operations of the local exchange carrier ("LEC"). APCC members may install and maintain public payphones which are owned by location owners, or they may themselves own and operate public payphones pursuant to space rental agreements with location owners.

There are also other variations on these themes. While some IPP providers operate several thousand payphones, most have fewer phones. Many APCC members operate less than 100 payphones each.

Usually, interstate coin service is provided at an IPP by reselling long distance service subscribed to by the payphone owner. A computer chip inside the payphone controls the process of placing a coin call, including consulting rate tables to determine how much to charge. Thus, the call is rated, the caller is prompted to insert coins, the coins are counted, and the call is completed pursuant to instructions programmed into the phone. Interstate coin service generally makes up a very small fraction of total payphone traffic and revenue.

Automated operator service may also be provided by the payphone owner on a resale basis by means of "store-and-forward" technology incorporated in a chip located inside the payphone. As with coin service, the payphone performs automated call processing operations by means of the technology located inside the phone. Instead of counting coins, however, the payphone stores billing information provided by the caller, and validates the billing information by automated means -- e.g., by transmitting a query to a calling card validation service. After accepting and validating the billing information, the payphone owner completes the call over a long distance service to which the payphone is subscribed.

In those instances where interstate service is provided at independent payphones on a resale basis, the payphone owner may be subject to tariff filing obligations, to the extent that the service is provided on a common carrier basis and the payphone owner is identifiably acting as "the carrier" for the service provided.

APCC's primary interest in this rulemaking is to ensure that fee filing requirements are equitable and are not unreasonably burdensome to IPP providers.

DISCUSSION

I. REGULATORY FEES APPLICABLE TO PAYPHONE SERVICE SHOULD BE EQUALLY APPLICABLE TO LEC PAYPHONES AS WELL AS IPPS.

APCC supports the payment of reasonable, fairly allocated regulatory fees by IPP providers, to the extent that IPP providers are common carriers subject to Title II of the Communications Act. However, any regulatory fees applicable to payphone service should be equitably imposed on all payphones, including local exchange carrier ("LEC") payphones.

A. The Commission Should Assess Regulatory Fees on LEC Payphones to the Same Extent as IPPs

The current proposal states that fees will apply to "pay telephone service" based on "the number of pay telephones used as the basis for pay telephone compensation." Notice, ¶ 59. This could be taken to mean that interstate services provided at LEC payphones, which are not subject to the Commission's pay telephone compensation rules, would not be subject to a fee requirement. There is no reasonable basis for such an exception.

One of the stated criteria for the application of fees is to ensure that parties "benefitting from our regulation of the interstate network should be subject to a regulatory fee payment." Notice, ¶ 56. Currently, FCC regulations confer numerous benefits on LEC payphones -- benefits which are not shared by independent payphones. For example, the FCC's Common Carrier Bureau has interpreted the FCC's access charge rules to apply end user common line charges to independent public payphones while exempting LEC public payphones. C.F. Communications Corp. v. Century Telephone of Wisconsin, et al., 8 FCC Rcd 7334 (1993), app. for review pending. Applications for review of this bureau decision have been pending for more than one year. A petition for declaratory ruling on the same subject has been pending for more than five years. In the Matter of the American Public Communications Council, Petition for Declaratory Ruling that End User Common Line Access Charges May Not Be Assessed on Competitive Public Pay Telephones, filed April 21, 1989.

The Commission's access charge rules also provide for a subsidy for LEC public payphone equipment from access charges for other services. 47 CFR §§ 69.303(a), 69.304(c). A comparable subsidy has never been made available to independent public payphones.

These benefits far exceed the benefits received by independent public payphones through the Commission's payphone compensation program. 47 CFR § 64.1301.

Therefore, LEC payphones and the services provided from such payphones should be subject to regulatory fees on the same basis as IPPs. If fees are imposed on services provided at IPPs, the same fees should be imposed on services provided at LEC payphones, in addition to the fees otherwise applicable to LECs as access service providers.

B. To Ensure Equitable Allocation of Fees, the FCC Must Act to Remove LEC Payphones from the Local Exchange Rate Base

Further, to ensure that the application of fees is truly equitable, and that regulatory fees for the LECs' competitive payphone services are not subsidized by ratepayers for non-competitive telecommunications services, the Commission must take action to ensure the removal of payphones from the LECs' rate base of local exchange facilities. The Commission's rules provide for LEC payphone equipment -- unlike virtually all other terminal equipment -- to be treated as an integral part of LECs' regulated network services. Tonka Tools, Inc., 58 RR 2d 903 (1985). Only IPP providers' payphone equipment is treated as customer premises equipment ("CPE").

As a result of this regulatory anomaly, IPP providers must pay all the costs of their payphone operations, including any applicable regulatory fees, but the costs of LEC payphone operations, including any applicable regulatory fees, are recovered in the LECs' overall revenue requirement for their regulated services.

A petition to remedy the misclassification of LEC payphones and the resulting gross inequities has been pending <u>for more than six years</u>. <u>In the Matter of the Public Telephone Council Petition for Declaratory Ruling that Bell Operating Company Pay Telephones Are Customer Premises Equipment for Regulatory Purposes</u>, filed July 18, 1988.

Therefore, the Commission must act to remove LEC payphones from the local exchange rate base. Until the Commission does so, the regulatory fees properly allocable to LEC payphones will simply be added to the overall LEC regulatory requirement, where they can continue to be supported by revenues collected from other ratepayers.

II. THE COMMISSION SHOULD CLARIFY THAT IPP PROVIDERS ARE NOT REQUIRED TO PAY MORE THAN ONE FEE PER PAYPHONE

As discussed above, the Commission proposes to apply fees to "pay telephone service" based on "the number of pay telephones used as the basis for pay telephone compensation." <u>Notice</u>, ¶59. At the same time, the Commission proposes to apply fees to "operator service" based on "the number of billing accounts less those accounts already associated with presubscribed lines reported by the carrier." <u>Id.</u>

Some IPP providers provide operator services at their payphones, on a resold "store-and-forward" basis. Since these IPP providers are already going to be paying 13 cents per payphone, as "pay telephone service" providers, for the provision of resold services at their payphones, it would not be appropriate to require

IPP providers to pay a second time for those same pay telephone services under the rubric of "operator service." The Commission should clarify that store-and-forward operator service provided by IPP providers at payphones is appropriately treated as "pay telephone service" for purposes of allocating fees.

As an alternative, the Commission could allow IPP providers to pay fees for all pay telephone services, including store-and-forward operator services, based on usage (i.e., $.08 per 1000 minutes) instead of "customer units," pursuant to the Commission's second alternative. Notice, ¶60. This alternative would present more administrative difficulties for IPP providers, but would be preferable to a system that requires double payment for pay telephone services.

In the event that the Commission does subject store-and-forward payphone operator services to fees as "operator service," and does assess those fees on the basis of "customer units," APCC requests clarification or modification of the definition of "customer units" for purposes of assessing regulatory fees for "operator service." The Commission proposes to define the "customer unit" for "operator service" as a "billing account." However, for purposes of operator service provided at locations such as pay telephones, the term "billing accounts" is ambiguous. Does the term "billing account" refer to the owner of the location where operator service is provided (e.g., the owner of a convenience store where a payphone is installed) or does it refer to each end user that places a call using an operator service provider? If each end user is to be considered a separate "billing account," then the fee requirement would be extremely burdensome and discriminatory against any operator service provider that offers service at a payphone. Each payphone may serve hundreds or even thousands of individual end users who place operator assisted calls. Treating each of those end users as a separate "billing account" for purposes of the fee requirement would multiply fees assessed "operator service providers" far out of proportion to the fees assessed other carriers of comparable size.

Therefore, APCC urges the Commission to assess fees on "operator service" providers based on the number of businesses or other locations for which an operator service provider is the "presubscribed provider of operator services." 47 U.S.C. §226(a)(8). Alternatively, fees should be assessed based on the number of lines for which an operator service provider is the "presubscribed" provider.

Respectfully submitted,

Robert F. Aldrich

Albert H. Kramer, Esq.
Robert F. Aldrich, Esq.
KECK, MAHIN & CATE
1201 New York Avenue, N.W.
Washington, D.C. 20554
(202) 789-3400

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